

DECISION

Dispute Codes: OPC, CNC, OLC, and FF

Introduction

These applications were brought by both the landlord and the tenants.

By application of April 13, 2010, the landlord seeks an Order of Possession pursuant to a Notice to End Tenancy for cause served by posting on the tenants' door on April 1, 2010 and setting an end of tenancy date of May 31, 2010. The landlord also seeks to recover the filing fee for this proceeding from the tenants.

By application of April 6, 2010, the tenants seek to have the Notice to End Tenancy of April 1, 2010 set aside and an order that the landlord comply with the legislation or rental agreement. The tenants too seek to recover their filing fee.

Issues to be Decided

These applications require a decision on whether the Notice to End Tenancy should be set aside or upheld with an Order of Possession. The tenants' application requires a further decision on whether any Order for compliance under section 55(3) of the *Act* is warranted.

Background and Evidence

This tenancy began on October 31, 2002. Rent is currently \$175.20 per month and the parties have agreed that it will rise to \$250 per month starting June 1, 2010.

As a matter of note, this tenancy was the subject of a hearing on February 4, 2010. In the outcome, the parties crafted a consent agreement under which they drafted a written rental agreement, agreed to the rent increase, committed to draft a plot plan of the mobile home site showing structures and agreed to a set of park rules, among others. While the landlord has referred to the terms of that agreement as “orders”, I must note that they are not formal orders as contemplated at section 55(3) of the *Act*, but enforceable terms of the consent agreement nevertheless

A key component of the consent agreement and the basis of the Notice to End Tenancy is the provision that: “ The tenants agree to have all items currently stored outside, on the property, relocated to inside storage, or off of the property....”

This provision would also be included in the tenants’ duties to maintain the mobile home site and repair damage to the site or common areas caused by the actions or neglect of the tenant or persons permitted on the property by the tenant as stated at section 26(2) and (3) of the *Act*.

During the hearing, the landlord submitted numerous photographs of debris on the site and common property and copies of written requests to the tenants to comply, summarized as follows:

Date	Subject
Jan. 14, 2010	To clear fire lane, move or remove 2 trailers and wood pile along drive west of site by Jan. 17, 2010; dismantle covered

	building constructed contrary to landlord's request.
Jan. 17, 2010	To remove wood, bark, plastics etc. along north border of site to permit fence construction, backhoe work by Jan. 24, 2010.
Jan. 18, 2010	To clean up garbage spill left around tenants' pick up area.
Jan. 23, 2010	Further request and explanations re preparation for work on West and North sides of lot; work start date changed to Jan. 31, 2010. Second letter offers assistance in engaging workers or equipment to help with cleanup.
Jan. 24, 2010	To clean debris on south of site 20 feet back from property line to permit fire road and fence; to be done by Jan. 31, 2010. Draft plot drawing provided.
Jan. 24, 2010	Notice that landlord will attend on Jan. 27, 2010 to mark site for plan and take photos.
Feb. 4, 2010	Previous hearing on tenant's application
Feb. 12, 2010	Debris over bank of N.E. corner of unit. Clean in 10 days. Also, hidden shed seems to be on neighbour's property – will have to be removed.
Feb. 22, 2010	Request for tenants' submission on site plan to meet agreement made during previous hearing.
March 4, 2010	Remove snow plow from top of property by March 6, 2010.
March 4, 2010	Repeat request re site plan, notice of landlord's intent to attend on March 9, 2010 and invites corroboration.
March 10, 2010	Notes no one home during March 9 th visit. Direction that no heavy equipment to be on site without written permission.
March 12, 2010	Notes that due to snow, will not attend to measure wells due to snow. Notes previously requested clean up has not been done. Second letter requests notification as to when clean up will begin.
April 17, 2010	Repeat request to clean up debris referred in letter of Feb. 12, 2010 by April 24, 2010. Second letter asks when tent storage area will be cleaned up and notes it is partially on neighbour's property.
April 23, 2010.	Notes no response to letter of April 17, 2010. Empty tent storage area – contains paint & flammable materials and is insurance concern.

The landlord gave evidence that with few exceptions, little of the work had been done and he had received little or no response from the tenants on his requests. The female

tenant noted that there had been so much correspondence from the landlord that it made it difficult to respond.

The tenants also noted that, in an attempt to get insurance for the building as agreed in the previous hearing, they were denied due to the lack of a required permit for installation of the structure.

The tenants also contested the landlord's request that they move a plough on the grounds that it was not on the landlord's property. They also noted that the landlord had deposited their June rent cheque (\$250) in lieu of the May cheque (\$172.50). However, they stated that the bank had reversed the transaction and I note that the cheque was dated June 1, 2010 and its processing would have included a bank error. The landlord apologized for this part in the error and offered to reimburse the tenants for any losses.

The landlord submitted approximately 80 photographs taken February 21st, March 16th, April 8th and April 14th 2010 showing various piles of wood, metal and other debris on the site and down the bank behind, as well as the "tent." In addition, at the hearing, he presented a photo taken two days before the hearing. All photos showed little or no progress as to the clean up.

The tenant also submitted photos at their hearing, illustrating some work and illustrating that the landlord's photos had been taken from a least favourable angle.

Both parties gave evidence that the ongoing acrimony of this dispute had made daily living very unpleasant for both and the landlord noted that he felt very uncomfortable in going anywhere near the mobile home site even though it was on his property.

Analysis

Section 40 of the *Act* sets out the conditions under which a landlord may issue a Notice to End Tenancy for cause.

I find that the tenants have breached sections 40(1) as follows:

- (f) the tenant does not repair damage to the manufactured home site, as required under section 26 (3) [*obligations to repair and maintain*], within a reasonable time;

- (g) the tenant

- (i) has failed to comply with a material term, and

- (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

I further find that the tenants have breached section 40(1)(c)(ii) and (iii) by seriously jeopardizing the landlord's lawful right to manage and maintain the property and in so doing, placed the property at risk.

Accordingly, I find that the Notice to End Tenancy of April 1, 2010 is lawful and valid and I find that it should be upheld with an Order of Possession.

Given the significant logistical challenges of relocating a manufactured home, I will set the end of tenancy date at July 31, 2010.

Conclusion

The landlord's copy of this decision is accompanied by an Order of Possession effective at 1 p.m. on July 31, 2010 for service on the tenants.

May 20, 2010